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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

PAMELA J. POST, Petitioner Employee, v. THE INDUSTRIAL COMMISSION OF ARIZONA, Respondent, ROYAL PET GROOMING & BOARDING, INC., Respondent Employer, TWIN CITY FIRE INSURANCE CO., Respondent Insurer.	2 CA-IC 2010-0015 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

SPECIAL ACTION – INDUSTRIAL COMMISSION

ICA Claim No. 20090-560209

Insurer No. YKX55039C

Honorable Gary M. Israel, Administrative Law Judge

AWARD AFFIRMED

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V Á S Q U E Z, Presiding Judge.

¶1 In this statutory special action, petitioner/employee Pamela Post challenges the Industrial Commission's award denying her claim for active medical care benefits. Post argues the Administrative Law Judge (ALJ) erred in concluding she did not require active medical treatment for her pre-existing psychological condition, aggravated by the injury, and in failing to consider and resolve conflicting expert medical testimony regarding the condition and treatment of Post's left hand. For the reasons that follow, we affirm.

Factual and Procedural Background

¶2 We view the evidence in the light most favorable to upholding the Industrial Commission's award. *Polanco v. Indus. Comm'n*, 214 Ariz. 489, ¶ 2, 154 P.3d 391, 392-93 (App. 2007). On February 12, 2009, Post, a dog groomer for respondent, Royal Pet Grooming & Boarding, Inc., injured her left hand in a work-related accident. Although the injury was surgically repaired on February 16, 2009, Post never regained full use of her left hand and ultimately left her employment with respondent. The respondent's insurer accepted Post's claim, but closed it effective August 6, 2009, with

no permanent disability. Post filed a request for a hearing before the Industrial Commission, claiming that she was continuing to have pain and weakness in her left hand, that she also was having pain in her right elbow due to overuse, and that the accident aggravated her pre-existing depression.

¶3 Post testified at the three-day review hearing, as did her primary care physician, Dr. Maxwell, her hand surgeon, Dr. Massey, and two independent medical experts who had examined her—Dr. Hayden, a hand surgery specialist, and Dr. Parker, a board-certified psychiatrist. The parties also submitted in evidence the reports of Dr. Fleming, a pain management expert who had examined Post at the insurer's request, and of Dr. Prust and Dr. Holland, pain management specialists, whom Post had seen on several occasions upon recommendation of Dr. Hayden.

¶4 On September 13, 2010, the ALJ issued an award adopting Dr. Massey's opinion that Post had two percent permanent impairment of her left hand and accepting Dr. Hayden's opinion that Post's left hand condition was medically stationary as of August 6, 2009. The ALJ also credited Dr. Hayden's testimony in concluding the injury to Post's right elbow was not work related and thus not compensable. With regard to Post's psychiatric condition, the ALJ adopted Dr. Parker's opinion elicited on cross-examination that the industrial injury had exacerbated Post's pre-existing depression and anxiety. But the ALJ concluded there was no evidence suggesting Post required any active or supportive medical treatment for this condition, that she had any restrictions, or that her condition resulted in a permanent impairment. The ALJ awarded Post supportive medical care consisting of two annual visits to a physician, twelve annual hand therapy

visits, and occasional pain medications under the management of Dr. Massey. The ALJ also awarded Post scheduled permanent disability compensation of $1,625.36 per month for 0.8 months. Post timely filed a request for review and the ALJ affirmed his prior decision. This special action followed. We have jurisdiction pursuant to A.R.S. §§ 23-951, 23-943(H), and Rule 10, Ariz. R. P. Spec. Actions.

Standard of Review

¶5 In reviewing findings and awards of the Industrial Commission, we defer to the ALJ's factual findings, but review questions of law de novo. *Grammatico v. Indus. Comm'n*, 208 Ariz. 10, ¶ 6, 90 P.3d 211, 213 (App. 2004). The ALJ determines witness credibility, *Royal Globe Ins. Co. v. Indus. Comm'n*, 20 Ariz. App. 432, 434, 513 P.2d 970, 972 (1973), and resolves conflicts in the evidence, *Johnson-Manley Lumber v. Indus. Comm'n*, 159 Ariz. 10, 13, 764 P.2d 745, 748 (App. 1988). "When more than one inference may be drawn, the [ALJ] may choose either, and we will not reject that choice unless it is wholly unreasonable." *Id.* The petitioner has the burden of proving that he has a compensable claim. *LaRue v. Indus. Comm'n*, 16 Ariz. App. 482, 483, 494 P.2d 382, 383 (1972).

Discussion

Continued Medical Treatment for Psychological Condition

¶6 Post first argues the ALJ erred in finding that her pre-existing depression, aggravated as a result of the industrial injury, did not require active medical treatment. In order to receive an award of continuing medical benefits, Post had the burden of proving her condition was not medically stationary. *See Lawler v. Indus. Comm'n*, 24 Ariz. App.

282, 284, 537 P.2d 1340, 1342 (1975). A condition is "medically stationary" when medical care cannot cure or improve the claimant's medical condition. *See Hardware Mut. Cas. Co. v. Indus. Comm'n*, 17 Ariz. App. 7, 9-10, 494 P.2d 1353, 1355-56 (1972). Until the condition is stationary, the claimant is entitled to curative, or active, care. *See Carbajal v. Indus. Comm'n*, 223 Ariz. 1, n.2, 219 P.3d 211, 214 n.2 (2009) (active treatment "is designed to reduce the level of injury or end the disability"), *citing* 5 Arthur Larson & Lex K. Larson, *Larson's Workers' Compensation Law* § 94.04 (2008).

¶7 Here, the medical testimony established that the industrial injury had aggravated Post's pre-existing depression. Dr. Maxwell, Post's primary care physician, testified that Post's depression became worse after the injury because of her continued pain and unemployment. Dr. Parker, the independent medical expert who conducted a psychiatric evaluation of Post, similarly testified on cross-examination that it would be reasonable to conclude that Post's inability to return to her date-of-injury work had exacerbated her pre-existing depression. The ALJ adopted these opinions in his decision. And, because there was no conflict in the medical testimony on this issue, he could not have concluded otherwise. *See Hopkins v. Indus. Comm'n*, 176 Ariz. 173, 177, 859 P.2d 796, 800 (App. 1993) (uncontroverted medical findings binding on Industrial Commission).

¶8 Post argues that because there was no dispute her pre-existing depression was aggravated by the industrial injury, and, because she was still receiving active medical treatment in the form of anti-depressants from Dr. Maxwell, the only reasonable inference to be drawn from this evidence was that "her active medical treatment for

depression [wa]s related to her industrial injury." And, Post claims, because the connection was obvious, no "magic question" was required to discern whether she was in need of "continued" active care for her depression.

¶9 But Post nevertheless still needed to demonstrate that her condition was not medically stationary and that continued medical treatment would improve her aggravated condition.[1] *Lawler*, 24 Ariz. App. at 284, 537 P.2d at 1342; *see also Carbajal*, 223 Ariz. 1, n.2, 219 P.3d at 214 n.2. In other words, Post had to establish not only that the medical treatment she required was somehow different from the treatment she already had been receiving at the time of the industrial accident, but also that such treatment, if continued, would improve her condition. And although the ALJ may ask questions to clarify the issues or simplify the hearing, essentially it is the claimant's burden to present all evidence necessary to establish a claim for compensation. *T.W.M. Custom Framing v. Indus. Comm'n*, 198 Ariz. 41, ¶ 12, 6 P.3d 745, 749-50 (App. 2000) ("Claimants bear the burden of establishing all material elements of their claim.").

[1]We agree with Post that generally an ALJ may draw reasonable inferences from the medical evidence, and medical opinions need not be expressed with "magic words" to be legally sufficient. *See Skyview Cooling Co. v. Indus. Comm'n*, 142 Ariz. 554, 559, 691 P.2d 320, 325 (App. 1984) (witness's omission of statutorily expressed causative language not fatal to claimant's burden to prove his claim when expressed opinion could be understood from context). However, the cases in which the courts found "magic words" in expert testimony to be unnecessary involve the issue of causation between the industrial accident and the injury claimed. *See generally id.*; *Phelps v. Indus. Comm'n*, 155 Ariz. 501, 506, 747 P.2d 1200, 1205 (1987); *see also Spielman v. Indus. Comm'n*, 163 Ariz. 493, 496, 788 P.2d 1244, 1247 (App. 1989). This is not the issue here. In this case, the testimony of Drs. Maxwell and Parker that the industrial injury had aggravated Post's pre-existing condition arguably established the causation element of Post's claim.

¶10 Dr. Maxwell's testimony was limited to his observations about Post's medical history, particularly her psychological condition and the medications he had prescribed for Post from 2002 to the date of the hearing. He testified that at no point during his treatment had he conducted a psychological evaluation of Post; rather, he had relied solely on her subjective complaints. And in her cross-examination of Dr. Parker, Post focused primarily on whether it was possible that the hand injury had aggravated Post's pre-existing psychological condition. Post did not develop the testimony of either doctor to the extent necessary to establish she was entitled to continuing medical care. Nor did she offer other evidence to support her claim.[2]

¶11 On the contrary, the evidence was undisputed that Post had suffered from anxiety and depression since 2002 and had been taking anti-depressants prescribed to her by her primary care physician, Dr. Maxwell, the entire time. Although Post had considered weaning herself off the medications around the time of the accident, she was

[2]Post claims the ALJ failed to "address or even mention the supporting favorable evidence contained in Dr. Fleming's report on the issue of . . . Post's depression." Specifically, she argues the ALJ should have considered Dr. Fleming's findings that she suffered from depression aggravated by her industrial accident. To the extent Post argues Dr. Fleming's opinion constituted reliable expert testimony on this issue, we disagree. Dr. Fleming's statements about the aggravation of Post's depression are merely a summation of opinions expressed by other medical experts and reiteration of Post's own concerns about her emotional state. Moreover, assuming Dr. Fleming, a pain management specialist, was qualified to provide expert testimony regarding Post's psychological condition, Post has not cited any authority to support her assertion that the ALJ is required to identify in his decision every piece of medical testimony before he can issue an award. We therefore do not consider this argument further. *See* Ariz. R. Civ. App. P. 13(a)(6) (appellant's brief must include argument "with citations to the authorities, statutes and parts of the record relied on"); *Carrillo v. State*, 169 Ariz. 126, 132, 817 P.2d 493, 499 (App. 1991) ("Issues not clearly raised and argued on appeal are waived.").

still taking them as of the date of her injury. Thus, absent other supporting evidence, and in light of Dr. Parker's testimony that Post's "functioning at the present time [wa]s not dissimilar substantially to . . . her functioning . . . prior to the industrial injury," the ALJ's conclusion was reasonable. Based on the record before us, we cannot say the ALJ erred in finding Post did not require continued active medical care for her pre-existing psychological condition.

Conflicting Medical Evidence Re: Left Hand Injury

¶12 Post further argues the ALJ erred when he failed to consider the opinions of Drs. Fleming, Prust, and Holland, and to resolve the conflict between their opinions and those of Drs. Massey and Hayden in regard to Post's left hand injury. Post contends that had the ALJ accepted the favorable opinions of Drs. Fleming, Prust, and Holland, Post's claim would have remained open.[3]

¶13 First, on the record before us, we find no conflict between the opinions of Drs. Fleming and Massey. *Rosarita Mexican Foods v. Indus. Comm'n*, 199 Ariz. 532, ¶ 10, 19 P.3d 1248, 1251 (App. 2001) (we review de novo whether medical expert's testimony created legally sufficient medical conflict in evidence regarding status of claimant's condition). Both doctors had determined that Post's symptoms were consistent with a diagnosis of neuralgia. Neither doctor was able to conclude to a reasonable degree of medical probability that Post's left hand was stationary and both believed Post required further therapy. And consistent with the views expressed by Dr.

[3]Drs. Fleming, Prust, and Holland did not testify before the Industrial Commission. Their reports, however, were submitted into evidence by the parties.

Massey, Dr. Fleming opined Post might benefit from "an aggressive hand therapy program geared toward strengthening and promoting normal usage of the hand," helping her to "regain most of her function" and to "significantly reduce[]" her pain levels. Similarly, we find no conflict between the opinions shared by Drs. Prust and Holland and the opinions held by Dr. Massey. Drs. Prust and Massey agreed the strength in Post's left hand had decreased, and all three doctors recommended continued pain management, albeit by different methods.

¶14 The opinions of Drs. Fleming, Prust, and Holland did, however, conflict significantly with Dr. Hayden's testimony. Unlike the other experts, Dr. Hayden found Post's range of motion in her left hand was essentially normal, with no impairment according to the AMA guidelines,[4] and he determined Post's condition was medically stationary with zero percent permanent disability. Although Post contends the ALJ failed to consider Fleming's, Prust's, and Holland's opinions, as we noted above, the opinions of those doctors on this issue are essentially similar to that of Dr. Massey. And, the ALJ resolved the conflict in the opinions of Drs. Massey and Hayden directly.

¶15 It "is the duty of the ALJ to resolve conflicts in the evidence and to determine which opinion is more probably correct." *Kaibab Indus. v. Indus. Comm'n*, 196 Ariz. 601, ¶ 25, 2 P.3d 691, 699 (App. 2000). After considering the medical evidence, the ALJ concluded that, although adopting Dr. Massey's testimony that Post had two percent permanent impairment, Post's left hand condition was stationary, per Dr.

[4]American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed.).

Hayden's opinion. On this record we do not find the ALJ's resolution unreasonable. *See Stainless Specialty Mfg. Co. v. Indus. Comm'n*, 144 Ariz. 12, 19, 695 P.2d 261, 268 (1985) (appellate court bound by ALJ's resolution of conflicting testimony and will not disturb conclusion unless "wholly unreasonable").

¶16 And although the ALJ did not summarize opinions of Drs. Fleming, Prust, and Holland in his decision, we can infer from the ALJ's consideration of Dr. Massey's similar opinions that the ALJ had considered their opinions as well. *See Pearce Dev. v. Indus. Comm'n*, 147 Ariz. 582, 583, 712 P.2d 429, 430 (1985) (some findings implicit in award). Accordingly we reject Post's contention that because the ALJ did not summarize the doctors' findings and conclusions in his decision, he did not consider their opinions in reaching a resolution.[5]

¶17 Next, although we note a conflict exists between Prust's and Holland's opinions and Fleming's opinion regarding Post's need for a ganglion block, we find no error in the ALJ not addressing this issue in his decision. Prust and Holland found that Post has complex regional pain syndrome (CRPS) and that "[t]he history and physical examination suggest that there is a component of sympathetic dysfunction." Based on those findings, they concluded "[Post] may gain benefit from a left stellate ganglion block." Dr. Fleming, on the other hand, opined that Post does not have CRPS and

[5]To the extent Post argues the ALJ had an obligation to summarize in his decision every medical expert opinion in evidence, we do not consider it further. She has not cited any authority to support this argument, and it is therefore waived. *See* Ariz. R. Civ. App. P. 13(a)(6) (appellant's brief must include argument "with citations to the authorities, statutes and parts of the record relied on"); *see also Carrillo*, 169 Ariz. at 132, 817 P.2d at 499.

concluded that because "there are no clear-cut signs or symptoms of altered sympathetic nerve function[, she] would not be in favor of performing a stellate ganglion block." The ALJ did not address this issue in his decision. It is, however, implicit in the ALJ's award that he did not accept Prust's and Holland's recommendations for a ganglion block. *See Pearce Dev.*, 147 Ariz. at 583, 712 P.2d at 430. And an ALJ is not required to make a specific finding on every issue, as long as he resolves the ultimate issues in the case. *See Cavco Indus. v. Indus. Comm'n*, 129 Ariz. 429, 435, 631 P.2d 1087, 1093 (1981). Here, the ALJ found Post's left hand condition was medically stationary, meaning her physical condition "'has reached a relatively stable status so that nothing further in the way of medical treatment,'" including the ganglion block, "'is indicated to improve that condition.'" *Home Ins. Co. v. Indus. Comm'n*, 23 Ariz. App. 90, 94, 530 P.2d 1123, 1127 (1975), *quoting Aragon v. Indus. Comm'n*, 14 Ariz. App. 175, 176, 481 P.2d 545, 546 (1971). The record supports the ALJ's conclusion and we find no error in his award.

Disposition

¶18 For the reasons stated above, we affirm the award.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge